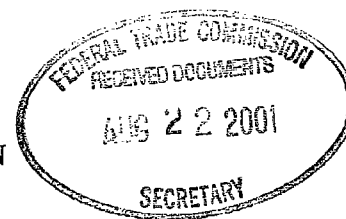


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



In the Matter of

SCHERING-PLOUGH CORPORATION,  
a corporation,

UPSHER-SMITH LABORATORIES, INC.  
a corporation,

and

AMERICAN HOME PRODUCTS  
CORPORATION,

a corporation.

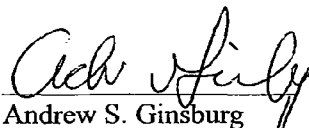
Docket No. 9297

**SUPPLEMENT TO COMPLAINT COUNSEL'S RESPONSE TO  
AMERICAN HOME PRODUCTS' MOTION TO COMPEL  
COMPLAINT COUNSEL TO CONFINE THEIR THEORIES  
TO THE ALLEGATIONS IN THE COMPLAINT**

Pursuant to Paragraph 7 of the Scheduling Order, complaint counsel is attaching the following unpublished opinions which are cited in Complaint Counsel's Response to American Home Product's Motion to Compel Complaint Counsel To Confine Their Theories to the Allegations in the Complaint. Those opinions are as follows:

- *In the Matter of the Electrical Bid Registration Service of Memphis, Inc.*, Dkt. No. 9183 (1984);
- *In the Matter of Cliffdale Associates, Inc.*, Dkt No. 9156 (1981);
- *In the Matter of Hughes Tool Company*, Dkt No. 9138 (July 20, 1980);
- *In the Matter of Times-Mirror Company, Inc.*, Dkt No. 9103 (Sept. 20, 1977).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Andrew S. Ginsburg", written over a horizontal line.

Andrew S. Ginsburg  
Counsel Supporting the Complaint  
Bureau of Competition  
Federal Trade Commission  
Washington, D.C. 20580

Dated: August 22, 2001

Citation  
1984 WL 251757 (F.T.C.)

Search Result

Rank 5 of 5

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In the Matter of THE ELECTRICAL BID REGISTRATION SERVICE OF MEMPHIS,  
INC., a corporation, and  
C.H. DENNIS, JR., individually and as an officer and director of said  
corporation, and  
JAMES L. OVERTON, WAYNE A. ALLEN, and JACK GROSS, individually and as directors  
of said corporation, and  
THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, MEMPHIS CHAPTER, a corporation  
Docket No. 9183  
DATE: August 29, 1984

ORDER DENYING RESPONDENT'S MOTION FOR A MORE DEFINITE STATEMENT

Paragraph 11(b) of the Complaint alleges that the Memphis Chapter of the National Electrical Contractors Association (hereinafter "Memphis Chapter") "formed a new bid depository, the Registry," and Paragraph 11(c) of the Complaint alleges that the Memphis Chapter "supported and/or controlled the Registry." Respondent Memphis Chapter moves for a more definite statement on the grounds that the Complaint fails to state "in what manner the Memphis Chapter formed a new bid depository" and "in what manner the Memphis Chapter and its members supported and/or controlled the registry."

The motion is denied. Commission complaints, like those in federal court, are merely designed to give respondent notice of the charges against him. *Conley v. Gibson*, 355 U.S. 41, 47 (1957); *L.G. Balfour v. F.T.C.*, 442 F.2d 1, 19 (7th Cir.1971). Paragraphs 11(b) and 11(c) meet this standard. Neither paragraph is ambiguous nor are they so vague that a responsive answer cannot be filed. The evidentiary detail and supporting evidence, which respondent's motion seeks, will be revealed later in various pre-trial procedures.

Morton Needelman

Administrative Law Judge

Dated: August 29, 1984

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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of  
CLIFFDALE ASSOCIATES, INC.,  
a corporation,  
JEAN-CLAUDE KOVEN,  
individually and as an  
officer of Cliffdale Associates,  
Inc.,  
ARTHUR N. SUSSMAN,  
an individual.

DOCKET NO. 9156

ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT

Respondents have filed a motion for more definite statement requesting that complaint counsel (1) be required to identify with more particularity the acts and practices which each respondent is alleged to have committed, and (2) should specify with greater particularity the dates when each of the respondents allegedly committed each of the acts alleged in the complaint. In this respect, respondents point out that the complaint does not state how the individual respondents engaged in the challenged practices. They also assert that the challenged advertisements that were appended to the complaint were disseminated prior to acceptance of a consent agreement by Judge Duvall, an Administrative Law Judge of the United Postal Service, on December 10, 1979.

Complaint counsel has opposed this motion, contending that respondents seek disclosure of evidence in support of the complaint and that such discovery is inappropriate at this stage of the proceeding. Complaint counsel argues that the complaint is legally sufficient to inform the respondents of the nature of the practices challenged in this proceeding. Complaint counsel adds that some post-complaint discovery will be necessary to determine exactly what respondents have done in the recent past.

In my opinion, the complaint satisfies the requirements of "notice" pleading. Respondents' motion indicates that they have sufficient information to file an answer, even if some portion thereof will entail a general denial. Accordingly:

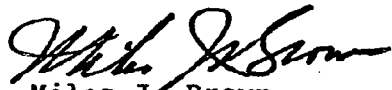
IT IS ORDERED that respondents' motion for more definite statement is denied.

IT IS FURTHER ORDERED that respondents file their answer to the complaint on or before September 10, 1981.

IT IS FURTHER ORDERED that the initial hearing date scheduled to be held September 8, 1981, notice of which was omitted in the original service copy of the complaint, is cancelled.

IT IS FURTHER ORDERED that the parties submit their first discovery requests, if any, to the Administrative Law Judge on or before September 23, 1981. All motions or applications for subpoenas should be filed on the public record.

IT IS FURTHER ORDERED that the parties advise the Administrative Law Judge of a mutually convenient date (and time) during the week of September 28, 1981, on which to hold the prehearing conference required by Section 3.21 of the Commission's Rules of Practice.



Miles J. Brown  
Administrative Law Judge

August 28, 1981

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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of  
HUGHES TOOL COMPANY,  
a corporation,  
BIG THREE INDUSTRIES, INC.,  
a corporation, and  
BEN F. LOVE,  
an individual.

DOCKET NO. 9138

ORDER DENYING MOTION OF BIG THREE INDUSTRIES,  
INC. FOR MORE DEFINITE STATEMENT

Big Three Industries, Inc. ("Big Three") has moved, pursuant to § 3.11(c) of the Commission's Rules of Practice, for a more definite statement of certain allegations in the complaint. Big Three claims that it cannot prepare its defense or file a responsive pleading because the complaint does not disclose:

1. The exact times during the period January 26, 1978 to the present when Big Three and Hughes Tool Company ("Hughes") were engaged in the manufacture, sale and distribution of blowout preventers and the sale and provision of well stimulation devices.
2. The exact times during the period January 26, 1978 to the present when Big Three and Hughes were engaged in the manufacture, sale or distribution of coiled tube units or parts thereof, wireline units or parts thereof and the manufacture, sale or rental of fishing tools.
3. The geographic areas in which the alleged competition took place.
4. The dollar volume of competition which existed with respect to each product or service mentioned in the complaint.
5. The precise definition of the products and services mentioned in the complaint.

Complaint counsel answer that the information sought by Big Three should be revealed, if at all, only during the discovery process, not now. I agree. Commission complaints, like those in the federal courts, are only designed to give a respondent "fair notice of what the . . . claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

While the complaint is sparse in detail, it is not ambiguous, Hodgson v. Virginia Baptist Hospital, Inc., 482 F. 2d 821, 824 (4th Cir. 1973), and Big Three can file a responsive answer to it, for its answer need only be as detailed as the complaint. The details of complaint counsel's case, including the dates when Big Three and Hughes competed, the geographic area in which they competed and the extent of that competition will be revealed as discovery progresses. Therefore,

IT IS ORDERED that Big Three's motion for a more definite statement be, and it hereby is, denied.



Lewis F. Parker  
Administrative Law Judge

July 22, 1980

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UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

In the Matter of  
TIMES-MIRROR COMPANY, INC.,  
a corporation.

DOCKET NO. 9103

ORDER DENYING MOTION FOR A MORE DEFINITE STATEMENT

Respondent has moved for an order requiring complaint counsel to furnish a more definite statement of the charges against the respondent:

"(1) identifying the type of advertising involved in this proceeding;

"(2) identifying by name and address each allegedly disfavored purchaser of advertising;

"(3) identifying by name and address each allegedly favored competitor of each disfavored purchaser; and

"(4) identifying the period of time during which the alleged price discrimination took place."

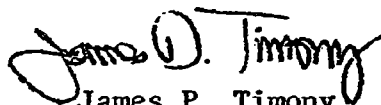
Because of the asserted vagueness of the complaint respondent claims to be unable to frame a responsive answer. Respondent argues that a more definite factual statement is required by the rule.

Section 3.11(b)(12) of the Rules of Practice provides that the complaint shall contain the following:

"A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the type of acts or practices alleged to be in violation of the law . . . ."

The complaint adequately informs respondent of its alleged unlawful acts and respondent does not need further elaboration in this regard to reply adequately to the complaint. The rule calls for notice pleading. The facts asserted in concise pleadings can be developed in discovery after issue is joined. Similar allegations of interstate commerce and the merits of a Robinson-Patman Act case have been held sufficient. Cold Guard Corp. v. Republic Aluminum Co., 38 F.R.D. 190, 193 (S.D.N.Y. 1965). Pleading of evidence is not required, and is a matter for discovery. The complaint should not include many specific instances. If it did, it would not prevent counsel at trial from adducing other evidence, as they can hardly know all their evidence, down to the last detail, long in advance of trial. Id. at 193.

The motion for more definite statement is denied.



James P. Timony  
Administrative Law Judge

September 20, 1977

### **CERTIFICATE OF SERVICE**

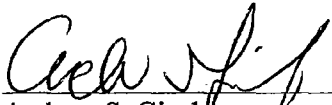
I, Andrew S. Ginsburg, hereby certify that on August 22, 2001, I caused a copy of the Supplement to Complaint Counsel's Response to American Home Product's Motion to Compel Complaint Counsel To Confine Their Theories to the Allegations in the Complaint to be served upon the following person by hand delivery.

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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Andrew S. Ginsburg